IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE THE GRANDPARENT-GRANDCHILD CONTACT OF W.B.S. and D.C.S., Minor Children, TANYA N. SPAULDING, Appellant, -and- SHARON K. SNYDER, Appellee.	)	CASE NO. 10-0027

BRIEF OF APPELLEE SHARON K. SNYDER

ON APPEAL FROM THE THIRTEENTH JUDICIAL DISTRICT COURT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF YELLOWSTONE
THE HONORABLE GREGORY R. TODD, PRESIDING

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STATEMENT OF THE CASE

The Appellant, Tanya Spaulding ("Mother"), appeals from the Order of the Hon. Gregory R. Todd of the Yellowstone County District Court, entered of record following proceedings conducted on December 21, 2009. Following a non-jury trial, the District Court denied a motion to terminate a court-ordered schedule for grandparent-grandchild contact.

This lawsuit began in 2007 with a petition filed by respondent, SHARON K. SNYDER ("Grandmother"), for grandparent and grandchild contact. Mother filed a response to the petition. The children, involved in the litigation, W.B.S. and D.C.S., are the children of Mother and the paternal grandchildren of Grandmother. The children's father is deceased.

The question of grandparent and grandchild contact was a contested litigation case before the District Court in 2007 and 2008. Both Grandmother and Mother were represented by counsel. Pre-trial discovery was conducted. On May 27, 2008, the contested contact case settled and an order was entered adopting the terms of the parties' stipulation which reads as follows:

> The parties to this proceeding, SHARON K. SNYDER and TANYA N. SPAULDING, hereby STIPULATE and AGREE as follows:

- The petitioner is SHARON K. SNYDER, of 6345 Pleasant Hollow Trail, Shepherd, Montana, P.O. Box 22213, Billings, Montana 59104. The petitioner is the paternal grandmother of the children, [WBS], age 9 years, and [DCS], age 6 years. The children's father, the son of the petitioner, is deceased.

- The respondent is TANYA N. SPAULDING, the natural mother and custodian of [WBS] and [DCS]. The children's father is deceased.

- The parties agree that it serves the best interests of the children for there to be grandparent and grandchild contact as permitted by § 40-9-101, et seq., MCA. The petitioner/ grandmother shall enjoy the following periods of time with the children:

a) Alternating Saturdays, with one alternating Saturday consisting of a daytime period of physical custody commencing at 10:00 a.m. and concluding at 7:00 p.m., and the next alternating Saturday commencing Saturday at 10:00 a.m. and concluding Sunday at 12:00 p.m.

b) A period of time of three (3) days during the Christmas/Winter break from school enjoyed by the children. This period of time shall not include either Christmas Eve or Christmas Day.

c) A one-week period of time each year during the children's Summer school-holiday period for the petitioner to enjoy a continuous vacation period with the children.

d) Specific arrangements for transportation and notices to the respondent for scheduling the Christmas and Summer vacation periods shall be provided at least two months in advance by petitioner to respondent by mail at the respondent's address, or such other address as respondent shall provide to petitioner from time-to-time, as follows:

Tanya N. Spaulding
1011 Avenue E
Billings, Montana 59102

> The petitioner shall provide the roundtrip transportation necessary to effect this schedule, picking up and returning the children at the respondent's home address.
>
> • The parties agree that the schedule of grandparent and grandchild contact as set forth above should be ordered by the Court;
>
> 5. Each party shall pay their respective attorney fees and costs, if any, incurred in the prosecution of this action.

Grandparent and grandchild contact thereafter occurred for approximately 15 months pursuant to the schedule of the stipulation as ordered by the District Court.

In August 2009, Mother, unilaterally and with no forewarning, terminated all grandchild contact with Grandmother. This present litigation was brought by Mother for termination of the grandparent and grandchild contact ordered pursuant to the stipulation; and, by the cross-motion of Grandmother, to find Mother in contempt.

Trial was conducted on the twin motions on December 21, 2009. The District Court, following the presentation of evidence, could find no reason, advanced by the evidence, to vacate its order adopting the stipulation for grandparent and grandchild contact and further found Mother in contempt of court.

It does not appear from the issues presented on appeal that the issue of contempt is one appealed from by Mother. The issues

before this Court center upon the propriety of the District Court Judge's action to deny the request for termination of the grandparent and grandchild contact stipulation and order.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The Appellant frames and presents the following issues for review by this Court:

I. Did the District Court apply the wrong legal standard in the proceeding involving Montana's Grandparent-Grandchild Contact statutes, at Title 40, Chapter 9?

II. Did the District Court err by failing to determine the fitness of a mother objecting to grandparent contact and by not applying a statutory presumption before granting grandparent contact pursuant to § 40-9-102, MCA?

III. Did the District Court, in action for grandparent contact, misapprehend the effect of the evidence presented by mother when it denied mother's motion to terminate grandparent contact and held her in contempt of court?

IV. Whether Montana's Grandparent-Grandchild Contact statutes, at Title 40, Chapter 9, violate a fit parent's due process right and ability to terminate or modify grandparent contact once established by stipulation and order?

V. Whether the distinction between "grandparent contact" and "custody", as identified in Montana case law, violates the fundamental constitutional right of parents?

SUMMARY OF ARGUMENT

The District Court was not in error to deny relief pursuant to the termination of contact motion, as framed by Mother, and litigated by her on December 21, 2009.

STANDARD OF REVIEW

In evaluating the work of a District Court, sitting in a non-jury case, this Court has unwaveringly stated its standard in evaluating District Court family law Findings of Fact and Conclusions of Law. In the case of *In Re Marriage of Danielson* (1992), 253 Mont. 310, 833 P.2d 215, this Court stated:

> This Court has recently clarified that our standard of review in regard to the factual findings of the District Court … is whether the District Court's findings are clearly erroneous. [Citation omitted.] Concerning this Court's review of conclusions of law made by a lower court, we have stated that '[w]e are not bound by the lower court's conclusions and remain free to remain our own.' [Citation omitted.] The basis for simply determining if the lower court's conclusions are correct is that there is no discretion in determining a question of law. The lower court is either correctly or incorrectly applies the law. *Steer, Inc. v. Dept. of Revenue* (1990) 245 Mont. 470, 803 P.2d 601;

By Grandmother's view, it is important, as well to keep in mind how the District Court instructs its jury, as fact finder. Montana Pattern Instructions include as follows:

> --The party that makes a claim must prove that claim by a greater weight of the evidence (*See*, MPI 1.08)
>
> --The fact finder (here, the District Court Judge) is the sole judge of the facts of the case. It is up to the fact finder to determine which witnesses you will believe and what weight will be given their testimony. (*See*, MPI 1.05)
>
> --If it appears that it is within the power of a party to offer stronger and more satisfactory evidence, the evidence offered by a party may be viewed with distrust (*See*, MPI 1.05).

Oftentimes in the case opinions of this Court, reference is made to the deference and respect to be given to the District Court, serving as fact-finder in a non-jury case.

This Court has often stated that "wide discretion is given to the District Court" and, on appeal, a determination of the District Court will be reversed only upon a showing of an abuse of this wide discretion. The test for abuse of discretion is "...whether the trial court acted arbitrarily without employment

of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice". *See, e.g., In re Marriage of Tonne* (1987) 226 Mont. 1, 733 P.2n 1280. This deference, Mother asserts, must be kept in mind in evaluation of this litigation on appeal.

STATEMENT OF FACTS

This court case began with the filing of a petition for grandparent and grandchild contact by Grandmother, the paternal grandmother of W.B.S. and D.C.S. *See*, District Court File Petition, Document No. 1. This case was a contested case. The case file before this Court indicates that the parties litigated the question of grandparent and grandchild contact for a number of months. *See*, Tr., p.38, l.4-7. Discovery was conducted in this contested proceeding, and the pasts of both Mother and Grandmother, given they are family members, were well known, one to the other and were explored in discovery. *See*, Tr., p.47, l.18.

The parties resolved the issue of grandparent and grandchild contact by entering into the written stipulation, which is entered of record as Document No. 15 filed in the District Court file. The District Court, by order, enacted the stipulation.

The stipulation was in place for approximately 15 months, through August 2009 and, during this term, Grandmother regularly enjoyed alternating weekend, holiday and vacation contact with her grandchildren. Indeed, the testimony was that the children seem to enjoy their time with their Grandmother, with only one

child missing but one alternating weekend. *See, e.g.*, p. 112, l.24-p.113, l.1.

In August 2009, because she felt she had the right, Mother unilaterally cut off all contact between the children and Grandmother. From that point, at least until the time of the December 21, 2009 trial, there were no contacts occurring between Grandmother and her grandchildren.

At trial, Mother came to the District Court and testified, as well as Grandmother, concerning the issue of grandparent and grandchild contact. Mother would not allow the children to testify or to be interviewed by the District Court. *See*, Tr., p.114, l.12-14. According to Mother, after the contact terminated, the older grandchild, W.S.B., had a number of counseling appointments with Billings therapist Kendall Jackson. Mother did not bring Mr. Jackson to Court to testify. Before her decision to cut off all contact, Mother never warned Grandmother that something was "going wrong" or the children reported something was going on in Grandmother's household which was contrary to the Mother's parenting practices. *See*, Tr., p.111, l.13.

Virtually, all of this litigation is, by Mother's own testimony, spawned by a work of fiction, a book, authored by Grandmother, which first came to the attention of Mother after

all contact was terminated by her. The book, by Mother's view, contained ideas contrary to her Jehovah's Witness faith. Importantly, there was no evidence presented that the children were ever exposed either to the book itself or any allegedly "bad" ideas espoused in it. More importantly, the book did not come to the attention of Mother until after she ended contact. Specifically, Mother testified "I didn't learn about the book and then [only] from what my sons told me." *See*, Tr., p.111, l.13-15. This "book" was admitted into evidence. How the discovery of the book, occurring after contact had ended, formed a reason to cut off all contact was left unexplained at trial.

At the commencement of the contract termination trial, the District Court asked counsel to address the question of what legal standard existed for termination of grandparent and grandchild contact which had been previously agreed upon by stipulation and court-ordered. A variety of evaluations of evidence standards were advanced. In response to the Court's inquiry, counsel for Mother specifically stated to the District Court:

BY MR. LABEAU:

Your Honor, may I respond to that:

THE COURT:

Yes.

MR. LABEAU:

I disagree with Mr. Sweeney's perception. I agree that there's no modification provision for grandparent rights, and I believe that might be a legal issue that you have to decide. I don't think that the standard is clear, and I don't think it's correct to say that it would be the same as in a parental modification. I think the background in this area of questioning is certainly relevant.

THE COURT:

Well, what about the fact that it was signed? And I presume since it's now December, we've had a year and a half of people operating on it. But I guess my, obviously, that can be an issue on what's standard is to modify; although, am I correct from your motion, Mr. LaBeau, you want to abolish—you want to totally strike the stipulation?

MR. LABEAU:

That's correct. We want to allow any contact solely at the discretion of mother.

THE COURT:

Well, what standard are you saying there is on this?

MR. LABEAU:

Your Honor, I believe that it would be of best interest at what the mother believes it is. I believe that the constitutional right of the mother prevails over the grandparental rights, and the fact of a stipulation that the mother would decide if she believes that it's no longer in her child' best interest, then that's the standard right there.

THE COURT:

> Well, let's say I agree with you on that. What effect does the stipulation have? Because we're not operating with a clean slate here.

MR. LABEAU:

> The stipulation was a schedule that the grandma would see the children so long as the mother agreed that it continued to be in their best interest.

THE COURT:

> Is that what it says? I've read it's Court Document No. 15. I don't see any proviso or subsequent powers of revocation on the two-page stipulation and order.

MR. LABEAU:

> I don't see that either, Judge. And I don't see that anywhere in the statute. But I think a parent still maintains that right whether it's set forth in an agreement. And if it's not set forth in the grandparenting rights statute, there certainly has to be some provision if the children are in harm's way or if the continued contact no longer serves the purpose it was enacted upon.

THE COURT:

> Well, that's what I'm going to listen to. As far as whatever thoughts entered into either one of these folks, that's water under the bridge. There's a contract signed here. It was stipulated and ordered. So that's what I want to hear. I want to hear why this deal should be changed. …

Tr., p. 9, l.12-p.11, l.16.

As to the standard, the Court stated that it would employ Mother's proffered standard and wanted to be presented with evidence "... on why the deal should be changed".

To meet her suggested burden, Mother called herself and her former sister-in-law as witnesses. Grandmother called only herself as a witness. At the conclusion of trial, the District Court found that Mother had failed to meet her burden of producing any substantial evidence, as the proponent of contact termination, to satisfy the District Court that grandparent and grandchild contact, under the various standards advanced by her attorney, should be changed.

At the conclusion of the witness testimony, the Judge stated to the parties:

THE COURT:

> Here is what I am going to do. I'm going to say that, first of all, there is a contract here. We're not talking about a blank slate where Section 40-9-102 comes into play. And not only was there a contract, a stipulation and order, but it was followed for, apparently, 15 months, approximately.
>
> There were significant items that Ms. Spaulding knew about Ms. Snyder before signing this, and Tanya was represented by counsel before signing the stipulation. Tanya knew of the suicide attempts, of the guardianship and conservatorship, of whatever role Ms. Snyder may have played in Andrew's drinking, and health and death, and mental health problems.

I have heard no testimony from Mr. Jackson. If there had been information detrimental to Ms. Snyder's story, I'm sure I would have heard it. I've heard there was basically monthly counseling sessions with no testing. But I've got no information of any psychological harm, yet the boys have been seen by a counselor for the last several months.

The boys have been prevented from coming here today and being interviewed. And with those last couple of factors, I think the proposition, if stronger testimony could have been offered and isn't, there's a presumption against whatever implications are there.

We've got this transcript that came that was talked about. First of all, it was never introduced. It was talked about, but it was never introduced. It looks really thick. But even if we have talked about it, we've got testimony that it was - the transcript referred to, that was marked as Exhibit A, was at least two or three iterations or copies before the final, and that it is listed under fiction.

We have - even if there are references in the manuscript and whatever Ms. Snyder may have written, I have no cause-and-effect relationship between the book, and the crystal child, and any harm to William. Or I have no cause and effect between any bit of Sharon's religious beliefs and harm to William. I have no cause-and-effect relationship between anything that Sharon may have done and Andrew's death.

We have an incredibly dysfunctional group of people here that, unfortunately, there are two little boys caught in the middle. I have a stipulation and order that was signed on May 22, 2008, followed for 15 months and now has stopped, and I am faced with what to do with it.

> I'm not aware of specific guidance as to either modifying or negating or voiding this stipulation. It could be interpreted as a contract. And if that's the case, if there's anybody that breached the contract, it's been Ms. Spaulding.
>
> At the very least, we are not talking about a situation where there has been no relationship between the two boys here and their grandmother. But more importantly, we have this document and the actions of the respective parties for this period of time.
>
> Now, I've got to believe there is some way that Ms. Spaulding can modify or I guess potentially void or negate the stipulation. Is it looking at the same statutory makeup as a parenting plan modification? I think, Mr. Sweeney, you recommended that or at least posited that as a method. I don't know if you were saying that's the burden that Mr. LaBeau and Ms. Spaulding had. But I interpreted that as if I take that route, then has Ms. Spaulding carried here burden? I don't think she has.
>
> We've got religious beliefs mixed up with family feuds. We've got people mostly, from what I can tell, just speculating if the catalyst here appeared to be this manuscript. Now, I don't know if that's the case or not, or whether if it wasn't going to be that, it was going to be something else that was going to boil up here. But whatever it is, I have not received enough evidence to grant relief to Ms. Spaulding to void or to terminate this stipulation and order that was signed in May of 2008.

Tr., p. 117, l.24-p.121, l.1.

Grandmother asserts that the District Court considered Mother's proffered standards and employing them could find no Substantial evidence to modify the Stipulation and Order.

ARGUMENT

I. Did the District Court Apply the Wrong Legal Standard in the Proceeding Involving Montana's Grandparent-Grandchild Contact Statutes, at Title 40, Chapter 9?

Mother asserts to this Court that the District Court erred by using parenting-modification standards under § 40-4-219, MCA, to evaluate the evidence. Aside from the fact that this wasn't the standard employed by the District Court, at trial, counsel for Mother expressed the standards to be that either: contact, court-ordered, either must end at Mother's will, or, that a "harms way" standard governs. These standards, by Grandmother's view, clearly do not govern this litigation. However, if either of the Mother's standards are the modification standard, the District Court, in its own words, stated that it employed them and further stated that the evidence did not rise to the level to meet either of them.

A careful review of the portion of the transcript set forth above will show that the District Court attempted to employ either of Mother's proffered standards. What specifically, the District Court said in its opening remarks to counsel was that it was that it was unclear as to what standard should be employed, but, the Judge knew that, clearly, the parties agreed in a contract, the stipulation, that contact occur and the Court

would look for some reason to set aside this grandparent contact contract. The Court stated to Mother's counsel that it would attempt to employ Mother's proposed standards. The Court, however, determined that Mother had failed in her burden of producing evidence to support her position. No substantial probative evidence was presented to convince the District Court, under any standard, to modify the agreed-upon schedule for contact.

Counsel for Grandmother asserts, moreover, that the proposed standard of Mother for modification on appeal - the "mother/prerogative" standard is flawed.

Counsel for Mother asserts that the standard of the grandparent and grandchild contact statute, itself, suggests the proper standard: Mother asserts that "whenever she [Mother] deems future contact to be inappropriate, then contact must end". This purported legal standard, by Grandmother's view, is fundamentally flawed. If this was the legal standard for modification of a court-ordered contact schedule, then a litigant/parent can, at any time, using whatever reason, ignore a court-ordered schedule for grandparent contact. This standard would render all grandparent contact litigation futile. Mother's proposed standard is the "rule" that all grandparents operate under, pre-litigation, in dealing with the parents of

their grandchildren. Litigation of this type exists to set a limited schedule that takes utter control from a parent, in the interests of the child, to have contact with a grandparent.

Moreover, if this is the standard, the Grandmother asserts, it was met in 2008 by the stipulation, because it shows that Mother agreed that it serves the best interests of the children to have contact with their grandmother. No evidence convinced the District Court to set aside this written agreement for contact that met the "best interests" of these grandchildren in 2008.

The District Court cannot be faulted for employing a standard that it simply did not employ. What the District Court stated to Mother was that she simply presented no probative evidence to the District Court that would suggest that under any legal standard, that the burden of proof had been met to set aside the stipulation and order for contact.

The party who has the affirmative of an issue has the burden of proof in litigation. *See, Stocking v. Johnson Flying Service* (1963) 143 Mont. 61, 387 P.2d 312. The burden of proof is on the parties have the affirmative of an issue. Sections 26-1-401 & 402, M.C.A. *See, also, Gibbons v. Huntsinger* (1938) 105 Mont. 562, 74 P.2d 443. Counsel for Mother, himself, fixed the standard for the District Court.

In his opening colloquy, it is provided:

THE COURT:

> Mr. LaBeau, you want to abolish—you want to totally strike the stipulation?

MR. LaBEAU:

> That's correct. We want to allow any contact solely at the discretion of mother.

THE COURT:

> Well, what standard are you saying there is on this?

MR. LABEAU:

> Your Honor, I believe that it would be of best interest at what the mother believes it is. … And if [the standard is] not set forth in the grandparenting rights statute, there certainly has to be some provision if the children are in harm's way or if the continued contact no longer serves the purpose it was enacted upon.

THE COURT:

> Well, that's what I'm going to listen to. …

At the conclusion of trial, because the sole witnesses proffered by Mother was herself and her former sister-in-law, instead of bringing the children and/or the children's therapist into court, the District Court found that she had failed to carry her burden of proof. The infamous book was something that became known to Mother only after she unilaterally suspended contact. Logically, it could not create a reason for suspension of contact. Simply put, under any standard, whether it be best

interests, or constitutional standards of grandparent and grandchild contact, or "harm's way", as suggested by Mother's counsel, this burden was not met. There is no error.

II. Did the District Court Err by Failing to Determine the Fitness of a Mother Objecting to Grandparent Contact and by not Applying a Statutory Presumption before Granting Grandparent Contact Pursuant to § 40-9-102, MCA?

The District Court, on December 21, 2009, was not applying the § 40-9-102 statutory standard before granting grandparent contact. Grandparent contact had already been court-ordered by agreement with Mother specifically stating to the District Court, in writing, that it served the best interests of her children for contact to occur.

There was no need for the District Court to inquire into Mother's fitness as a parent. At this point in the litigation, parental fitness was not an issue. The suggested error, as offered by Mother, is one that would suggest settling the issue of grandparent/grand contact by written stipulation, court-ordered, is something that a mother can change at any time for any reason, which cannot be questioned by a court.

Grandmother fully recognizes that a parent has a constitutional right to parent their child, and that this right is a fundamental right protected under Montana and United States Supreme Court case authority. *See, Polasek v. Omura* (2006) 332

Mont. 157, 136 P.3d 519. As described above, if the "legal standard" suggested by Mother governed post-contact ordered grandparent cases, all grand-parent/grandchild contact litigation would end because successful litigation by a grandparent would be undone by whim of a parent.

III. Did the District Court, in Action for Grandparent Contact, Misapprehend the Effect of the Evidence Presented by Mother when it Denied Mother's Motion to Terminate Grandparent Contact and held her in Contempt of Court?

This issue, as framed, is one that counsel for Grandmother is having difficulty understanding for writing a response.

By Grandmother's view, the District Court received and considered the evidence presented. No evidence error is argued on appeal. The evidence was simply not enough in the view of the District Court to end agreed-upon and Court-ordered contact defined in the Stipulation and agreed to be contact that serves the best interests of these grandchildren.

The District Court heard a wealth of evidence concerning the background of this family. Specifically, the testimony included all the material that Mother claims the Court misunderstood. For example, examination included:

> BY MR. SWEENEY:
>
> Q. Ms. Spaulding, when you signed the stipulation document in 2008, you certainly knew of your mother-in-law's suicide attempt?

BY TANYA SPAULDING:

A. Yes.

Q. And you knew about the issues concerning the guardianship and conservatorship?

A. Yes.

Q. And you knew of your mother-in-law's part, as it was described by her daughter, in your husband's life at the end of his life –

A. Yes.

Q. -- you certainly knew about that?

A. Yes.

Q. And you knew about her mental health problems?

A. Yes.

Q. In fact, Mr. Graves, in the court file, reflects the directed discovery to get all of the records concerning her mental health treatment, correct?

A. Yes.

Q. And you knew about all of that?

A. Yes.

Q. And you had concerns when you signed that stipulation that your mother-in-law was a nonbeliever in your faith?

A. Yes.

Tr., p.109, l.16-p.110, l.21.

The District Court, in its post-trial oral findings, describes its thought process concerning all of this evidence.

It is undisputed that this evidence was known by Mother when she signed the Stipulation and Order agreeing to contact. Notwithstanding all of this knowledge, Mother signed a statement that her children's best interests would be served by a regular schedule of grandparent contact with Grandmother. How is the District Court "misapprehending" this evidence, when Mother, herself, discounted it to the point of signing the Stipulation and Order?

The District Court knew of the history of this family, it considered all evidence offered by Mother, no evidence rulings are being challenged on appeal; and concluded that Mother failed in meeting her burden.

There is no reversible error.

IV. Whether Montana's Grandparent-Grandchild Contact Statutes, at Title 40, Chapter 9, Violate a Fit Parent's Due Process Right and Ability to Terminate or Modify Grandparent Contact once Established by Stipulation and Order?

V. Whether the Distinction between "Grandparent Contact" and "Custody", as Identified in Montana Case Law, Violates the Fundamental Constitutional Right of Parents?

Grandmother combines these two issues on appeal The two issues, by her view, can be responded to in the same fashion. Grandmother objects to this Court's consideration of these arguments because neither of these issues were presented either

to the Attorney General, pretrial, or presented to the District Court prior to trial.

This Court has oftentimes instructed counsel that "we will not address on appeal an issue not presented to the District Court." *See, e.g., Carl Weissman & Sons, Inc. v. Paulsen* (1987) 227 Mont. 459, 739 P.2d 494. Rule 24(d), M.R.Civ.P., requires the proponent of cases involving constitutional questions, where the State is not a party, to give notice to the Attorney General so that it may intervene concerning statutes sought to be struck as unconstitutional. This notice was not given. Here, Mother suggests that § 40-9-101, et seq., MCA, Montana's grandparent and grandchild statute, is constitutionally deficient because it does not contain provisions to allow for its modification. With regard to these issues, it is respectfully suggested that this Court not consider these arguments because of failure to follow procedure.

CONCLUSION

It has never been disputed that Mother is a fit parent; and, as a fit mother, she has by express statement to the District Court agreed that it served the best interests of her children for there to be grandparent and grandchild contact. Mother suggested this contact end eighteen months later by filing a petition to terminate contact. At trial, Mother presented no proof, in the eye of the District Court as fact finder, that would lead it to conclude that the burden of proof placed upon the proponent of this matter was carried. The District Court did not commit reversible error in denying the end to reasonable grandparent and grandchild contact.

RESPECTFULLY SUBMITTED this 21 day of April, 2010.

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ATTORNEY FOR APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana rules of Appellate Procedure, I certify that the **Brief of Appellee** is printed with a monospaced Courier text typeface of 12 points; is doubled spaced; MS Word, is not more than 40 pages, excluding the Certificate of Service and this Certificate of Compliance.

RESPECTFULLY SUBMITTED this 21 day of April, 2010.

KEVIN T. SWEENEY
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ATTORNEY FOR APPELLEE

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I served true and accurate copies of the foregoing BRIEF OF APPELLEE by depositing the copies into the U.S. Postal Service, postage prepaid, this 23 day of April, 2010, addressed to opposing counsel of record, as follows:

Benjamin J. LaBeau
LABEAU LAW FIRM, LLC
1645 Avenue D, Suite B
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By: